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FEDERAL COMMUNICATIONS COMMISSION  
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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of

Inquiry Concerning the Deployment of  
Advanced Telecommunications  
Capability to All Americans in a Reasonable  
and Timely Fashion, and Possible Steps  
to Accelerate Such Deployment  
Pursuant to Section 706 of the  
Telecommunications Act of 1996

CC Docket No. 98-146

REPLY COMMENTS  
of the  
GENERAL SERVICES ADMINISTRATION

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## **Summary**

Responses to the NOI demonstrate that almost all consumers now have access to advanced telecommunications services, such as the Internet, but only through facilities controlled by the incumbent local exchange carriers. To accelerate deployment of more advanced services, the Commission should take steps to increase competition for local access services. The Commission must also prevent incumbent carriers from using their control over local access facilities to make it difficult for competitive LECs to provide their own advanced telecommunications services to homes and businesses throughout the nation.

GSA urges the Commission to reject requests by incumbent LECs for unfettered authority to offer advanced services over their own networks. Regulatory restrictions that separate the activities of incumbent carriers in providing advanced and conventional services are necessary to fulfill the Commission's pro-competitive aims. Some of the restrictions that the Commission has suggested will motivate incumbent LECs to reduce their charges for advanced services provided to end users and interconnection services provided to other carriers.

GSA concurs with other users that rate structures employed by incumbent carriers present barriers to open competition for advanced services. For example, high access charge revenues provide incumbent LECs with a competitive advantage in developing and deploying advanced telecommunications services. Access charges should be reduced and access rate structures should be modified so that competitors have additional incentives to provide advanced services outside of core business areas.

GSA also concurs with other parties that the Commission should take some additional steps to remove barriers to competition. For example, the Commission should find that dark fiber is an "unbundled network element" as defined by the Telecommunications Act. The Commission should also adopt rules to ensure that competitive LECs have efficient access to operations support systems.

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**REPLY COMMENTS  
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GENERAL SERVICES ADMINISTRATION**

The General Services Administration ("GSA") submits these Reply Comments on behalf of the customer interests of all Federal Executive Agencies ("FEAs") in response to the Commission's Notice of Inquiry ("NOI") released on August 7, 1998. The NOI invites comments and replies on actions that the Commission should take to ensure the deployment of advanced telecommunications capabilities to all Americans as soon as possible.

**I. INTRODUCTION**

The NOI seeks information on the current deployment of advanced telecommunications services, the perceived demands for more services, the capabilities of carriers to provide additional services, and statutory or regulatory barriers to accelerated deployment.<sup>1</sup> The primary objective of the inquiry is to identify

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<sup>1</sup> NOI, paras. 8-10.

the best means to expedite deployment of advanced services to the general public and designated recipients such as schools, libraries, and health care facilities.<sup>2</sup>

GSA emphasized in its Comments that the FEAs' experience in procuring telecommunications services throughout the nation has shown that innovative and technologically current services are most likely to be deployed in areas where vigorous competition for all services exists at the present time.<sup>3</sup> Moreover, GSA explained that there are significant barriers to competition that will impede deployment of advanced telecommunications services. These barriers include rate structures for services provided to carriers and end users that do not reflect costs, high access charges, and the lack of efficient access to operations support systems ("OSS").<sup>4</sup>

More than 70 additional parties also submitted comments to address the NOI. These parties include:

- 13 local exchange carriers ("LECs") and associations of these firms;
- 5 interexchange carriers;
- 12 specialized carriers and associations of these firms;
- 13 Internet service providers;
- 7 cable television companies and associations of these firms;
- 4 end users and associations of these firms;
- 5 research and consulting firms;
- 3 equipment suppliers;
- 2 state regulatory agencies; and
- 7 miscellaneous parties.

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<sup>2</sup> *Id.*, para. 8.

<sup>3</sup> Comments of GSA, pp. 4-5.

<sup>4</sup> *Id.*, pp. 5-8.

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In these Reply Comments, GSA responds to the positions advanced by these parties.

**II. MOST ACCESS TO ADVANCED TELECOMMUNICATIONS SERVICES IS THROUGH FACILITIES CONTROLLED BY LOCAL EXCHANGE CARRIERS.**

The NOI requests data on the deployment of advanced telecommunications services, the estimated demands for additional services, and the capabilities of carriers to meet these needs.<sup>5</sup> The Commission focuses these requests on competitive LECs, seeking comments on whether they are likely to enter the mass market and become full facilities-based competitors by bypassing existing wireline facilities.<sup>6</sup>

Responses to the NOI show that almost all consumers can obtain wideband information services offered over high-speed, long-haul data networks, including the Internet, but only by using access facilities controlled by the incumbent LECs. This observation is particularly significant because some LECs attempt to minimize their influence in data markets.

For example, Bell Atlantic contends that "cable companies are the incumbents in providing advanced services."<sup>7</sup> However, AT&T reports that there are only about 300,000 cable modem subscribers in all of North America.<sup>8</sup> In view of this statistic, and the minor roles of wireless and satellite data services at this time, there can be no dispute that the "last mile" facilities owned almost exclusively by incumbent LECs have control over access to advanced telecommunications services by almost all subscribers.

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<sup>5</sup> Comments of GSA, p. 2.

<sup>6</sup> NOI, para. 31.

<sup>7</sup> Comments of Bell Atlantic, pp. 5-8.

<sup>8</sup> Comments of AT&T, p. 13.

Although incumbent LECs are providing the great majority of network connections, competitive LECs are now starting to deploy advanced telecommunications services in large metropolitan areas.<sup>9</sup> Comments by a firm providing services in the telecommunications field indicate that Covad, Dakota Services, NorthPoint, Network Access Solutions, Concentric and other competitive LECs are now offering advanced telecommunications services over Digital Subscriber Loops ("DSLs").<sup>10</sup> These carriers are primarily targeting business users, and it appears that the competitive LECs will not initially attempt to serve "mass" markets. Instead, competitors are positioning their facilities to compete with incumbent LECs in offering services to selected business customers.<sup>11</sup>

The carriers' focus on metropolitan areas is dramatized by comments submitted by a community network in rural Indiana. The comments of Crawford County Community Network were submitted "to express concern that communities continue to be left behind as telecommunications advance in urban areas."<sup>12</sup> The comments noted that at least one local exchange area has no Internet service provider that can be accessed through a local call, while the county seat itself has Internet access only because of financial assistance by the state government.<sup>13</sup>

While most evidence is qualitative, comments by other parties confirm GSA's observations that advanced telecommunications services are far more prevalent in areas where competition exists for basic local exchange services than in areas where

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<sup>9</sup> Comments of Kiesling Consulting LLC ("Kiesling"), p. 5.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Comments of Crawford County Community Network, p. 1.

<sup>13</sup> *Id.*

competition for local services has not developed.<sup>14</sup> As GSA explained, open competition for provision of all telecommunications services, including basic local exchange services, is a key requirement for bringing the benefits of advanced services to all groups of users throughout the nation.<sup>15</sup>

**III. THE COMMISSION SHOULD REJECT REQUESTS BY INCUMBENT LOCAL EXCHANGE CARRIERS TO PROVIDE ADVANCED TELECOMMUNICATIONS SERVICES WITH NO REGULATORY CONSTRAINTS.**

**A. Incumbent LECs are seeking unfettered authority to offer advanced services.**

In comments addressing the barriers to competition, incumbent LECs request the Commission to sharply reduce regulatory oversight of advanced telecommunications services. For example, BellSouth asserts that the Commission should forbear from employing pricing, tariffing and other restrictions. Specifically, BellSouth seeks forbearance from: (1) price cap or rate of return regulation; (2) the requirements to file tariffs on more than one day's notice; (3) any requirements for cost support; and (4) all regulations governing the activities of dominant carriers in Section 214 of the Commission's rules.<sup>16</sup>

Indeed, several incumbent LECs extend their requests for regulatory forbearance to encompass nearly all services that they offer, and services that might offer in the future, including conventional voice communications. For example, USTA requests the Commission to forbear from separate subsidiary requirements, unbundling and resale obligations, and enforcement of "arcane interLATA restrictions"

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<sup>14</sup> Comments of GSA, p. 4.

<sup>15</sup> *Id.*, p. 5.

<sup>16</sup> Comments of BellSouth Corporation ("BellSouth"), p. 47.



that place all incumbent LECs at a disadvantage to their competitors.<sup>17</sup> In addition, BellSouth requests the Commission to "reasonably interpret" all requirements of Telecommunications Act<sup>18</sup> concerning interconnection, resale and other regulations as applied to all new offerings by incumbent LECs.<sup>19</sup>

GSA urges the Commission to reject claims that regulatory surveillance of the incumbent LECs is no longer necessary to ensure open competition for advanced telecommunications services. Although the competitive field for advanced services is more fragmented than that for voice services, regulatory surveillance is still necessary to ensure that incumbent LECs do not extend their control over local access facilities employed for traditional voice telecommunications to advanced services that they will deploy in the future.

**B. Anti-competitive actions by some incumbent carriers have impaired deployment of advanced services.**

In evaluating applications by several large incumbent LECs to provide interLATA services pursuant to Section 271 of the Telecommunications Act, the Commission has found that the local exchange market is still controlled by incumbent LECs that own the local access facilities "that go the last mile" to nearly every home and business.<sup>20</sup> Carriers submitting comments in response to the NOI describe steps by incumbent LECs that have had significant impacts on the deployment of all telecommunications services. These carriers provide strong evidence that some

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<sup>17</sup> Comments of United States Telephone Association ("USTA"), p. i.

<sup>18</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, amending the Communications Act of 1934, 47 U.S.C. § 151 *et seq.* ("Telecommunications Act").

<sup>19</sup> Comments of BellSouth, p. ii.

<sup>20</sup> See e.g., Memorandum Opinion and Order, Application of SBC Communications Inc. Pursuant to Section 271 of the Communications Act of 1934, as amended, CC Docket No. 97-121, FCC 97-228, released June 26, 1997, para. 20; and NOI, para. 19.

incumbent LECs have prevented open competition by exerting their control over network facilities.

For example, AT&T states that some incumbent carriers have refused to provide local loops capable of supporting the Digital Subscriber Loop ("DSL") technology.<sup>21</sup> Also, according to MCI/Worldcom, some Regional Bell Operating Companies ("RBOCs") have thwarted attempts by competitive LECs to collocate at their central offices.<sup>22</sup> Furthermore, AT&T reports that none of the incumbent LECs have a properly functioning, automated and nondiscriminatory operations support system interface, and various incumbent carriers have refused to provide shared transport.<sup>23</sup> In addition, MCI/Worldcom states that RBOCs have imposed anti-competitive conditions on combinations of unbundled network elements ("UNEs"), rendering competition based on these facilities almost impossible.<sup>24</sup> These actions have impaired competition for basic local communications services for several years, but they are potentially more significant in impeding competing for advanced services that depend to a greater extent on efficient interfaces between interconnected carriers.<sup>25</sup>

In comments addressing the barriers to competition, AT&T explains that the benefits of competitive markets for advanced telecommunications services are starkly contrasted by considering the deployment of long-haul backbone transport facilities.<sup>26</sup> The market for these backbone facilities is very competitive. As a result of open

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<sup>21</sup> Comments of AT&T Corp. ("AT&T"), p. 29.

<sup>22</sup> Joint Comments of MCI Communications Corporation and Worldcom, Inc. ("MCI/Worldcom"), pp. 8-9.

<sup>23</sup> Comments of AT&T, pp. 29-30.

<sup>24</sup> Comments of MCI/WorldCom, pp. 8-9.

<sup>25</sup> *Id.*, pp. 27-30.

<sup>26</sup> *Id.*, p. 28.

competition, the backbone facilities employ technologies that can now accommodate advanced services at extremely high data rates, far surpassing the capabilities of the local networks over which incumbent LECs have maintained monopoly control.<sup>27</sup>

In summary, there are still many significant obstacles to competition for all services, as GSA and other commenting parties have explained. These obstacles will impede the deployment of advanced telecommunications services because they withhold economic incentives to competition and because they deny access to the infrastructure necessary for deployment of new systems and facilities. To ensure open competition, the incumbent LECs' activities in providing advanced services should be removed from regulatory surveillance only if they are performed through subsidiaries whose relationships with incumbent LECs are carefully defined.

**C. Incumbent LECs should be required to employ a separated subsidiary to offer advanced services without regulatory surveillance.**

In a Notice of Proposed Rulemaking ("NPRM") released simultaneously with this NOI, the Commission described a proposed set of regulations to allow incumbent LECs to provide advanced services through separate subsidiaries. These subsidiaries would not be subject to the resale, unbundled access, collocation and other obligations of the Telecommunications Act.<sup>28</sup> The separated subsidiaries would also be free from price caps or similar types of regulation.<sup>29</sup> The NPRM identified specific requirements for structural separation:

- the incumbent and its affiliate must operate completely independently — all transactions between the two organizations

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<sup>27</sup> *Id.*

<sup>28</sup> NPRM, para. 83.

<sup>29</sup> *Id.*

must be at arm's length, in writing, and available for public inspection;

- the two organizations must maintain separate books, records and accounts, and they must have separate officers, directors, and employees;
- the affiliate may not obtain credit under an arrangement that would permit a creditor to have recourse to the assets of the incumbent;
- the incumbent LEC must not discriminate in favor of its affiliate in any way — all network elements, facilities, interfaces and systems provided by the incumbent to the affiliate must also be available to unaffiliated entities; and
- the affiliate and its incumbent must interconnect pursuant to tariff or an interconnection agreement.<sup>30</sup>

As a additional safeguard, the Commission would require that all specific structural separations and nondiscrimination requirements must be in place before a subsidiary would be relieved of the existing regulatory requirements on the incumbent LEC.<sup>31</sup>

Regulatory restrictions that fully separate the activities of incumbent carriers in providing advanced services and conventional services are necessary to fulfill the Commission's pro-competitive aims for both groups of services. First, the proposed restrictions present effective roadblocks to anti-competitive activities by either the incumbent or its affiliate. Second, the proposed conditions motivate incumbent LECs to reduce prices for advanced services provided to end users and charges for interconnection services provided to other carriers.

In Comments submitted in response to the NPRM, GSA urged the Commission to adopt these procedures.<sup>32</sup> As structured in the NPRM, the plan will lead to lower

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<sup>30</sup> *Id.*, para. 96.

<sup>31</sup> *Id.*, para. 83.

<sup>32</sup> Deployment of Wireline Service Offering Advanced Telecommunications Capability, CC Docket No. 98-147 *et al.*, Comments of GSA, September 25, 1998.

prices for advanced services as well as other services provided by LECs. Moreover, the proposed plan will encourage innovation and investment that should foster deployment of advanced services in urban and rural markets.

#### **IV. RATE STRUCTURES EMPLOYED BY INCUMBENT CARRIERS PRESENT BARRIERS TO OPEN COMPETITION.**

##### **A. Incumbent LECs should not employ revenues from high access charges to exploit their advantage over competitors in developing markets for advanced services.**

A recent report issued by the Commission's Industry Analysis Division shows that the interstate rates of return for the seven RBOCs ranged from 10.3 percent to 18.2 percent in 1997.<sup>33</sup> These high earnings are a direct result of interstate access charges that are far above costs.<sup>34</sup>

In spite of their high earnings, incumbent carriers assert that the Commission's rules should be liberalized. For example, Ameritech states that the Commission's "new service" pricing regulations discourage deployment of new facilities.<sup>35</sup> U S WEST contends that obligations to provide services for resale at discounted rates have the effect of depressing incentives on incumbent carriers to invest in deploying advanced telecommunications capabilities.<sup>36</sup>

GSA urges the Commission to reject claims that the major carriers face significant financial constraints. Excessive charges on interconnected carriers have caused end users to pay too much for telephone services. Also, they have prevented the development of more competition by placing financial burdens on potential

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<sup>33</sup> Industry Analysis Division, *Trends in Telephone Service*, July 1998, Table 14.1.

<sup>34</sup> Comments of GSA, pp. 7-88.

<sup>35</sup> Comments of Ameritech, p. 16.

<sup>36</sup> Comments of U S WEST Communications ("U S WEST"), p. 26.

competitors. Moreover, excessive access charges have created a large pool of funds that incumbent carriers may use to support deployment of advanced telecommunications services.

GSA acknowledges that significant participation by incumbent LECs in advanced services markets is beneficial. Moreover, vigorous competition between incumbent LECs and competitive LECs is good for end users. However, incumbent LECs should not be permitted to fund competitive ventures through excessive charges for interconnections that are ultimately borne by ratepayers for other services.

**B. Rate structures for access services impede deployment of advanced services to many users.**

Comments in response to the NOI confirm that access charge structures which obtain a disproportionately large share of revenue from business subscribers also provide a barrier to the advanced telecommunications services. GSA explained that the Commission has correctly modified the access charge system for price cap LECs to recover most non-traffic sensitive costs with fixed monthly charges.<sup>37</sup> However, the access charge structures still impede competition because they obtain a disproportionately large amount of revenue from business users.<sup>38</sup> For example, as GSA noted, the present differences in the caps on the Presubscribed Interexchange Carrier Charges ("PICCs") applicable to business and residence lines have no cost basis whatsoever.<sup>39</sup>

Comments by the Alliance for Public Technology ("APT"), which represents more than 300 non-profit organizations and other entities, also address this issue.

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<sup>37</sup> Comments of GSA, p. 6.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

APT notes, "Price regulation that permits substantially lower residential than business rates without an adequate cost justification seems to attract investment disproportionately to the business markets, leaving residential customers without the benefit of upgraded systems."<sup>40</sup> APT acknowledges that safety nets are required for low income consumers and residents of high cost areas.<sup>41</sup> However, APT's recommended approach to this issue is similar to that advocated by GSA in other proceedings before the Commission. In those proceedings, GSA has recommended that necessary support be provided through explicit targeted mechanisms that are not hidden in rate structures, to avoid giving incorrect pricing signals to end users and interconnected carriers.<sup>42</sup>

An access charge system with unbalanced charges for business users discourages competition in providing local exchange services and advanced telecommunications services to subscribers outside of core city areas. GSA urges the Commission to make further modifications in the access charge structures so that they reflect the cost patterns for all carriers under its jurisdiction.

**V. THE COMMISSION SHOULD TAKE STEPS TO REMOVE  
ADDITIONAL BARRIERS REPORTED BY COMPETITIVE  
CARRIERS AND END USERS.**

**A. The Commission should issue a finding that dark fiber is  
an unbundled network element.**

Parties responding to the NOI identify barriers to competition in addition to rate structures and rate levels for interstate services. For example, Allegiance Telecom

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<sup>40</sup> Comments of the Alliance for Public Technology, p. 1 and p. 8..

<sup>41</sup> *Id.*, p. 8.

<sup>42</sup> *Id.* and Access Charge Reform, CC Docket No. 96-262 *et al.*, Comments of GSA and U.S. Department of Defense, January 29, 1997, pp. 7-12.

explained that the uncertain regulatory status of dark fiber presents a substantial barrier to competitive LECs in obtaining these facilities from incumbent providers.<sup>43</sup> The availability of dark fiber is especially critical for advanced telecommunications services, because fiber provides extremely high transmission capacities at relatively low cost.

Incumbent LECs complain that dark fiber leases are not in their own interests. For example, GTE states that it provides dark fiber leases when required by state regulators. However, the company continues to believe that dark fiber is not a UNE because it is not actually used in providing telecommunications services.<sup>44</sup> GSA urges the Commission to reject this argument.

Allegiance Telecom strongly urges the Commission to resolve regulatory issues concerning the provision of dark fiber. GSA concurs with this new competitive LEC in urging the Commission to find that dark fiber is a common carrier offering that should be considered as a UNE as defined by the Telecommunications Act.<sup>45</sup>

**B. The Commission should ensure that competitive LECs have efficient access to operations support systems.**

As end users of telecommunications services, the FEAs have seen that the lack of efficient access to operations support systems ("OSS") is a barrier to open competition for both voice and data services.<sup>46</sup> To provide services to their own end users, competitive LECs need computer-based access to all OSS functions, including pre-ordering, ordering, provisioning, maintenance, repair, and billing for telecommunications services.

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<sup>43</sup> Comments of Allegiance Telecom, Inc., p. 6.

<sup>44</sup> Comments of GTE, p. 12, n. 30.

<sup>45</sup> Comments of Allegiance Telecom, Inc., p. 6.

<sup>46</sup> Comments of GSA, p. 7.



In responding to the NOI, competitive LECs confirm the importance of access to OSS for provision of advanced telecommunications services. For example, Worldcom notes that competitive LECs need detailed information on the capabilities of local loops to support high bandwidth transmission plans.<sup>47</sup> In addition, AT&T states that virtually all new entrants that provide data services will require access to seamless OSS interfaces, as well as full access to collocation options and UNEs.<sup>48</sup>

GSA concurs with the views expressed by Worldcom and AT&T on this issue. The major incumbent carriers control most of the local telecommunications infrastructure in the nation. Efficient competition benefiting end users for basic or advanced services will not develop until competing carriers have efficient access to this infrastructure.

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<sup>47</sup> Comments of MCI/Worldcom, p. 10.

<sup>48</sup> Comments of AT&T, p. 43.

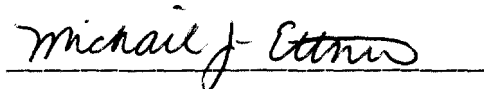
## VI. CONCLUSION

As a major user of telecommunications services, GSA urges the Commission to implement the recommendations set forth in these Reply Comments.

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